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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/854,648	05/14/2001	Amy J. Donnan	DON0002/US/2	8779

7590

11/18/2002

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EXAMINER

SUHOL, DMITRY

ART UNIT

PAPER NUMBER

3712

DATE MAILED: 11/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

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**Office Action Summary**

Application No.

09/854,648

Applicant(s)

DONNAN, AMY J.

Examiner

Dmitry Suhol

Art Unit

3712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 October 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,4 and 6-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4 and 6-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 6-9 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 6, the structural features encompassed by the phrase “tear drop-shaped” can’t be determined, rendering the claim indefinite.

Regarding claim 7, the structural features encompassed by the phrase “sun-shaped” can’t be determined.

Regarding claim 8, the structural features encompassed by the phrase “fire-shaped” can’t be determined, rendering the claim indefinite.

Regarding claim 9, the structural features encompassed by the phrase “ghost-shaped” can’t be determined, rendering the claim indefinite.

Regarding claim 12, the structural features encompassed by the phrase “plush, pillow bag” can’t be determined, rendering the claim indefinite.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4, 6-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Van Hoose in view of Shaver et al and Aduvala. Van Hoose discloses an interactive toy containing most of the elements of the claims including, providing a plurality of playpieces (fig. 3) as required by claims 1 and 13, each playpiece symbolic of particular emotion (col. 2, lines 35-47) as required by claims 1 and 13, each playpiece comprising a unique shape (elements 29, 31, 33, 35, 37 and 39) as required by claims 1 and 13, providing a container comprising a storage chamber as required by claims 1 and 13 (element 23 and 45), a first playpiece generally symbolic of love (35) as required by claim 4, a second playpiece generally symbolic of sadness as required by claim 4 (33), a third playpiece generally symbolic of happiness (31) as required by claim 4, a fourth playpiece generally symbolic of fear (29) as required by claim 4, one or more playpieces comprising one or more panels enclosing a stuffing material (col. 5, lines 18-21 and fig. 3, element 35), a container being heart shaped and a plush pillow bag as required by claims 11 and 12 (elements 23 and 45). Van Hoose further discloses interacting with a toy as required by claims 13-15 (col. 3, lines 6+).

Although Van Hoose discloses most of the elements of the claims, as stated above, the reference fails to teach each playpiece comprising a unique color as required by claims 1 and 13, a unique visually discernible information selected from the group consisting of at least one of textual and graphical information as required by claims 1 and 13, a separate playpiece generally symbolic of anger as required by claim 4, and naming an emotion corresponding to a playpiece as required by claim 16. However,

Shaver discloses an interactive toy like that of Van Hoose, which teaches the use of a unique color for a plurality of playpieces generally symbolic of a particular emotion (col. 4, lines 58-59 and figs. 10a-10g). Aduvala also discloses an interactive toy like that of Van Hoose, which teaches the use of graphical and textual information for a plurality of playpieces generally symbolic of a particular emotion (figs. 4a-4h). Therefore it would have been obvious to one having ordinary skill in the art, at the time of the claimed invention, to incorporate the teachings of Shaver and Aduvala in the toy of Van Hoose for the purpose of further assisting children with recognizing emotions, thoughts and actions in daily life by providing playpieces which are distinctive in appearance from each other. It would have been further obvious to provide the toy of Van Hoose with a separate playpiece generally symbolic of fear, especially since Van Hoose recognizes anger as an emotion which needs to be displayed (col. 4, line 39) and since representation of anger as an emotion is well known in the art (i.e. Aduvala fig. 4f). Regarding the shapes required by claims 6-9, it would have been obvious to incorporate the particular shapes in the toy of Van Hoose for the purpose of interest to the child, especially since Van Hoose states that various changes in form and details may be made without departing from the spirit and scope of the invention (col. 4, lines 16-21). The specific shapes encompassed by claims 6-9 are an obvious design choice in that the applicant discloses no critical need or advantage for them. It would have been further obvious to including naming an emotion corresponding to a playpiece for the purpose of clearly identifying a child's emotions especially, since such method steps are well known in the art.

Claims 1, 4 and 6-16 and rejected under 35 U.S.C. 103(a) as being unpatentable over Van Hoose in view of Childsworld/Childsplay "Feelings Frogs Game". Van Hoose discloses most of the elements of the claims, as stated above, but for each playpiece comprising a unique color as required by claims 1 and 13, a unique visually discernible information selected from the group consisting of at least one of textual and graphical information as required by claims 1 and 13, a separate playpiece generally symbolic of anger as required by claim 4, and naming an emotion corresponding to a playpiece as required by claim 16. However, Childsworld/Childsplay discloses interactive playpieces which teach the use of a unique color and the use of textual information for a plurality of playpieces generally symbolic of a particular emotion (see Childsworld/Childsplay "Feelings Frogs Game", page 22). Therefore it would have been obvious to incorporate the teachings of Childsworld/Childsplay in the toy of Van Hoose for the purpose of further assisting children with recognizing emotions, thoughts and actions in daily life by providing playpieces which are distinctive in appearance from each other. It would have been further obvious to provide the toy of Van Hoose with a separate playpiece generally symbolic of fear, especially since Van Hoose recognizes anger as an emotion which needs to be displayed (col. 4, line 39) and since representation of anger as an emotion is well known in the art (i.e. Childsworld/Childsplay, red frog). Regarding the shapes required by claims 6-9, it would have been obvious to incorporate the particular shapes in the toy of Van Hoose for the purpose of interest to the child, especially since Van Hoose states that various changes in form and details may be made without

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departing from the spirit and scope of the invention (col. 4, lines 16-21). The specific shapes encompassed by claims 6-9 are an obvious design choice in that the applicant discloses no critical need or advantage for them. It would have been further obvious to including naming an emotion corresponding to a playpiece for the purpose of clearly identifying a child's emotions especially, since such method steps are well known in the art.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1, 4 and 6-16 have been considered but are moot in view of the new ground(s) of rejection. Applicant's argue that shapes encompassed in claims 6-9 are sufficiently definite, the examiner respectfully disagrees. A tear drop shape could be a variety of shapes such as a circle, oval, or blob with no clear defined boundries, a sun shape can be a variety of shapes as well such as a circle, an oval, a half circle among others, as to a fire shape the examiner can't even begin to describe the variety of shapes that are encompassed by such a term. Furthermore, the examiner respectfully reminds the applicants that a child does not constitute a legally recognized barometer of what makes a claim definite/indefinite.


### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dmitry Suhol whose telephone number is 703-305-0085. The examiner can normally be reached on Mon - Friday 9am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 703-308-1745. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

ds  
November 13, 2002



DERRIS H. BANKS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700



## **DETAILED ACTION**

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